

BAY COUNTY ELECTION COMMISSION

OCTOBER 23, 1990

THE BAY COUNTY ELECTION COMMISSION MET ON TUESDAY, OCTOBER 23, 1990, IN THE COMMISSIONERS GROUND FLOOR CONFERENCE ROOM OF THE BAY COUNTY BUILDING. THE MEETING WAS CALLED FOR THE PURPOSE OF CLARITY HEARING ON PETITION LANGUAGE SUBMITTED FOR THE RECALL OF COUNTY EXECUTIVE, KIM A. HIGGS. THE MEETING WAS CALLED TO ORDER BY THE CHAIRMAN OF THE COMMITTEE, JUDGE PAUL DONER AT 8:40 A.M. THE FOLLOWING COMMITTEE MEMBERS AND GUESTS WERE IN ATTENDANCE.

ROLL CALL: PROBATE JUDGE PAUL N. DONER, CHAIRMAN  
COUNTY TREASURER, EDWARD LEWANDOWSKI  
COUNTY CLERK, BARBARA ALBERTSON, SECRETARY

ALSO PRESENT: KIM A. HIGGS, COUNTY EXECUTIVE  
PATRICK O. DUGGAN, DEPUTY EXECUTIVE  
CYNTHIA A. LUCZAK, SECRETARY TO THE CLERK  
CONSTANCE FAUBLE, PETITIONER FOR RECALL  
NEWSMEDIA

CHAIRMAN PAUL N. DONER NOTIFIED THE MEMBERS IN ATTENDANCE OF THE SECTION OF LAW CALLING FOR THE MEETING OF ELECTION COMMISSION MEMBERS. THIS LAW WAS MCLA 168.952 FOR APPROVAL OF THE PETITION SUBMITTED FOR RECALL. ALSO, THAT THE REASONS FOR RECALL STATED IN THE PETITION WERE OR WERE NOT OF SUFFICIENT CLARITY FOR THE PERSON BEING RECALLED AND THE ELECTORS TO DETERMINE THE BASIS FOR RECALL. FURTHER, THAT CLARITY OF THE PETITION WORDING WAS THE SOLE ISSUE FOR CONSIDERATION AT THIS TIME. CHAIRMAN DONER ACCEPTED COMMENTS FROM THE INDIVIDUAL NAMED FOR RECALL, KIM A. HIGGS.

EXECUTIVE HIGGS STATED HIS POSITION, THAT THE PETITION LACKED CLARITY TO ENABLE HIM OR THE ELECTORATE TO DETERMINE THE COURSE OF CONDUCT WHICH WAS THE BASIS FOR RECALL. HE FURTHER REALIZED THE RIGHT TO RECALL WAS A CONSTITUTION RIGHT ENFORCED BY THE COURT BUT FELT ELECTED OFFICIALS SHOULD BE AFFORDED MINIMAL DUE PROCESS. HE DID NOT FEEL THE PETITION AS PRESENTED

PROVIDED HIM DUE PROCESS. IN ADDITION, MR. HIGGS CITED FORMER COURT CASES WHICH HE FELT APPLIED UNDER THESE CIRCUMSTANCES. FIRST, THE CASE OF NOWELL VS. OAKLAND COUNTY CLERK (1979) "INCOMPETENCE IN ADMINISTERING HIS/HER DUTIES AS AN ELECTED OFFICIAL AND IN A MATTER NOT CONDUSIVE TO THE BETTER INTERESTS TO THE RESIDENTS TO THE CITY OF SOUTH LION" HERE THE COURT DETERMINED THE RECALLED INDIVIDUAL WAS TO RECEIVE SOME DUE PROCESS GUARANTEES. SECONDLY, THE CASE OF MULLITOR VS. MILLER (1980) "NON-FEASANCE OF OFFICE, FAILURE TO CONDUCT TOWNSHIP BUSINESS FOR THE GOOD AND WELFARE OF ALL RESIDENTS". IN THIS CASE THE NON-FEASANCE ISSUE DID NOT CLEARLY INFORM THE ELECTORATE OF THE NATURE AND CIRCUMSTANCES SURROUNDING THESE ACTS. THUS THE REASONS WERE INSUFFICIENT AS THEY DID NOT NOTIFY THE OFFICIAL OF THE INCIDENTS WHEREIN THESE ALLEGATIONS REFER. LASTLY, THE CASE OF MASTONS VS. OAKLAND COUNTY ELECTION COMMISSION (1983) WHEREBY "A SINGLE TRANSACTION PROVIDES AN ADEQUATE BASIS FOR RECALL DRIVE ALL THAT IS REQUIRED IS THAT THE REASON FOR RECALL BE STATED WITH SUFFICIENT CLARITY TO ENABLE THE OFFICER AND ELECTORS TO IDENTIFY THE TRANSACTION AND KNOW THE CHARGES CONNECTED THERE WITH". ADDITIONAL INFORMATION FROM THAT CASE HAD BEEN PROVIDED AS WELL. IT WAS THE OPINION OF KIM HIGGS, THAT THE LANGUAGE DID NOT IDENTIFY ANY SPECIFIC TRANSACTIONS TO WHICH THE EXECUTIVE COULD RESPOND AND DID NOT CONTAIN ANY ACTS ON WHICH THE CONCLUSIONS WERE BASED AND DID NOT AFFORD HIM THE DUE PROCESS HE WAS ENTITLED. THEREFORE, HE ASKED THE BOARD TO DENY THE PETITION OF A LACK OF CLARITY.

PURSUANT TO THE OPEN MEETING ACT THE PETITIONER AND GUESTS WERE ABLE TO VOICE THEIR PUBLIC COMMENTS.

CONSTANCE FAUBLE WISHED TO ADDRESS THE COMMISSION AT THIS TIME. SHE FELT THE PETITION PRESENTED WAS SELF-EXPLANATORY. FURTHER, SHE DID NOT FEEL SHE WAS GIVEN ROOM TO BE AS SPECIFIC AS SHE WANTED TO BE. MS. FAUBLE OPENED THE FLOOR FOR DISCUSSION OF ANY QUESTIONS THE BOARD NEEDED ANSWERED.

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BOARD MEMBER EDWARD LEWANDOWSKI, INDICATED HE HAD A PROBLEM WITH THE WORDING OF THE PETITION WHICH INDICATED "THE EXECUTIVE HAS SPENT HIS ENTIRE TERM". MR. LEWANDOWSKI FELT THE STATEMENT SHOULD HAVE BEEN MORE SPECIFIC.

MS. FAUBLE RESPONDED TO THE INQUIRY OF MR. LEWANDOWSKI BY STATING THE EXECUTIVE MADE A LOT OF CAMPAIGN PROMISES THAT HE DID NOT ADHERE TO SINCE TAKING OFFICE - HIS ENTIRE TERM UP TO THIS POINT.

CLERK ALBERTSON ALSO POINTED OUT THAT THE EXECUTIVE HAD NOT COMPLETED HIS "ENTIRE TERM" IN QUESTION, EITHER. THAT THE ELECTOR MAY BE CONFUSED BY THE WORDING SHE HAD PRESENTED.

JUDGE DONER WAS FAMILIAR WITH THE MULLITOR VS. MILLER CASE PREVIOUSLY CITED PRESENTING THE "MALFEASANCE" ARGUMENT. JUDGE DONER INDICATED THAT LANGUAGE WAS NOT CLEAR IN THE PETITION EITHER. IT DID NOT PRESENT THE CONCERNS IN WHICH SHE BASED THAT STATEMENT ON. NO ACT OR ACTS HAD BEEN NAMED. IN THE PETITION THE ONLY SENTENCE THAT WAS CLEAR AND PRESENTED HER BASIS WAS THE SENTENCE NAMING THE SAID POLICE ISSUE. "THE INABILITY TO PROVIDE THE CITIZENS OF BAY COUNTY WITH POLICE PROTECTION". JUDGE DONER STATED IT WAS NOT HIS RESPONSIBILITY TO TELL MS. FAUBLE WHAT THE WRITE IN THE PETITION, ONLY TO APPROVE OR DENY THE CLARITY SO WHEN PLACED ON THE BALLOT FOR THE VOTERS TO DECIDE, WOULD BE CLEAR ENOUGH TO UNDERSTAND.

PATRICK DUGGAN SPEAKING AS A CITIZEN, INDICATED UNDER SECTION 966, MR. HIGGS WAS ALLOWED TO WRITE A RESPONSE TO MS. FAUBLES CLAIM, TO BE PRINTED ON THE BALLOT IN A LIMITED NUMBER OF WORDS. THIS WOULD PROVIDE HIM A DUE PROCESS IN WRITING AS WELL AS BEING ABLE TO CAMPAIGN THE RECALL PRIOR TO PLACEMENT OF ANSWER ON THE BALLOT.

BARBARA ALBERTSON ADDED THAT MR. HIGGS WOULD HAVE THE RIGHT TO APPROACH THE PUBLIC & REFUTE THE ACCUSATIONS MADE. MS. ALBERTSON PROVIDED HER DEFINITION OF MALFEASANCE AS WRONGDOING AND NOTED THE FACT THAT WRONGDOING MAY NOT MEAN MALFEASANCE, ONLY THAT THE PERSON MAY NOT BE ABLE TO DO THE JOB ELECTED TO DO. IF THE WORDING WAS APPROVED BY THE COMMISSION TODAY, THE PETITIONS WOULD BE CIRCULATED FOR 90 DAYS AND THE EXECUTIVE HAVE 90 DAYS TO CAMPAIGN AND PREPARE AN ANSWER TO BE PLACED ON THE BALLOT FOR RECALL.

JUDGE DONER REPORTED THE RESPONSIBILITY OF THE COMMITTEE WAS ONLY TO DETERMINE THE CLARITY OF THE WORDING FOR THE ELECTORATE TO MAKE A KNOWLEDGEABLE DECISION FROM. THE COMMISSION WAS NOT TO DETERMINE THE BASIS FOR PETITION.

FOLLOWING THE DISCUSSION, COUNTY CLERK ALBERTSON MADE THE FOLLOWING MOTION. CLERK ALBERTSON MOVED TO DENY THE RECALL PETITION SUBMITTED REGARDING THE OFFICE OF COUNTY EXECUTIVE HELD BY KIM HIGGS. THE WORDING OF THE PETITION WAS DENIED DUE TO QUESTIONS RAISED BY THE LANGUAGE "ENTIRE TERM" AND ALSO "MALFEASANCE OF DUTY" HELD BY KIM HIGGS. EDWARD LEWANDOWSKI SUPPORTED THE DENIAL OF THE PETITION SUBMITTED AND THE MOTION WAS CARRIED BY A ROLL CALL VOTE OF 3 YEAS, 0 NAYS.

CHAIRMAN DONER ANNOUNCED THE PETITION SUBMITTED BY MS. FAUBLE FOR THE RECALL OF COUNTY EXECUTIVE KIM A. HIGGS HAD BEEN DENIED DUE TO QUESTIONABLE LANGUAGE SUBMITTED AS DETERMINED BY THIS CLARITY HEARING. HE FURTHER THANKED THE PERSONS IN ATTENDANCE FOR THEIR COMMENTS AND RECESSED THE COMMISSION SESSION AT 9:05 A.M.

PAUL N. DONER, PROBATE JUDGE  
CHAIRMAN OF ELECTION COMMISSION

BARBARA ALBERTSON, COUNTY CLERK  
SECRETARY OF THE ELECTION COMM.

EDWARD LEWANDOWSKI, TREASURER  
MEMBER OF ELECTION COMMISSION

Cynthia A. Luczak  
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